



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0715]

RIN 1625-AA00

Safety Zone; Blasting, Delaware River

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the waters of the Tinicum Range, Eddystone Range, Chester Range, and Marcus Hook Range, in the Delaware River from December 1, 2016 to March 15, 2016. The safety zone would temporarily restrict vessel traffic from transiting or anchoring in a portion of the Delaware River while rock blasting, dredging, and rock removal operations are being conducted to facilitate the Delaware River Main Channel Deepening project for the main navigational channel of the Delaware River. This action is needed to protect personnel, vessels, and the marine environment from potential hazards created by rock blasting, dredging, and rock removal operations. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2016-0715

using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email MST1 Thomas Simkins, Sector Delaware Bay Waterways Management Division, U.S. Coast Guard; telephone 215-271-4889, e-mail Tom.J.Simkins@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

| | |
|--------|---------------------------------|
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of proposed rulemaking |
| § | Section |
| U.S.C. | United States Code |
| COTP | Captain of the Port |

II. Background, Purpose, and Legal Basis

The Army Corps of Engineers (ACOE) is sponsoring a project, termed “The Deepening,” in which dredging operations are taking place in the Delaware River and Bay navigational channel deepening the channel to 45 feet. The project goal is to maintain a minimum depth of 45 feet to accommodate larger vessel traffic entering the Sector Delaware Bay Zone. The upcoming portion of the project requires the deepening of the Delaware River from Tinicum Range, south, through Marcus Hook Range, in which the topography consist of mostly rock bottom. To satisfy the minimum project depth of 45 feet the ACOE has hired Great Lakes Dredging Company to perform rock blasting operations, dredging, and removal of rock in Tinicum Range, Eddystone Range, Chester Range, and Marcus Hook Range, in the Delaware River from December 1, 2016, to March 15, 2017. The Captain of the Port, Delaware Bay, has determined that potential hazards

associated with rock blasting, dredging, and rock removal operations, will be a safety concern for anyone within 500 yards of rock blasting, dredging, and rock removal operations. This proposed rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the operational area.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-yard radius of rock blasting, dredging, and rock removal operations. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231; 33 CFR 1.05-1 and 160.5; and Department of Homeland Security Delegation No. 0170.1.

III. Discussion of Proposed Rule

This proposed rule would establish a safety zone from December 1, 2016, through March 15, 2017. The safety zone would cover all navigable waters in the Delaware River within 500 yards of vessels and machinery being used by personnel to conduct rock blasting, dredging, and rock removal. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while operations are being conducted.

For the duration of the project, in the vicinity of the rock blasting, rock removal, and dredging operation, one side of the main navigational channel will be closed due to the drill boat APACHE being unable to relocate for vessel traffic while conducting rock blasting and removal operations. Additionally there is a potential for blasted rock to be within the navigational channel causing a navigational safety hazard for vessels transiting the safety zone. Vessels wishing to transit the safety zone in the main navigational channel may do so if they can make satisfactory passing arrangements with drill boat APACHE, dredge TEXAS, or dredge NEW YORK in accordance with the navigational rules in 33 CFR subchapter E via VHF-FM channel 13 at least 30 minutes prior to arrival. If vessels are unable to make satisfactory passing arrangements with

the drill boat APACHE, dredge TEXAS, or dredge NEW YORK they may request permission from the Captain of the Port, or his designated representative, on VHF-FM channel 16. All vessels must operate at the minimum safe speed necessary to maintain steerage and reduce wake.

No vessels may transit through the safety zone during times of explosives detonation. During rock blasting detonation, vessels would be required to maintain a 500 yard distance from the drill boat APACHE. The drill boat APACHE will make broadcasts, via VHF-FM channels 13 and 16, at 15 minutes, 5 minutes, and 1 minute prior to detonation, as well as a countdown to detonation on VHF-FM channel 16. The drill boat APACHE will also raise a red flag signifying when a detonation is occurring. The 500 yard radius will be secured by a contracted security vessel on either side of the blast area. Security vessels will ensure the blasting area is clear prior to explosive detonation. Sector Delaware Bay will ensure significant notice is given to the maritime community of dates and times of blasting via broadcast notice to mariners on VHF-FM channel 16. After every explosive detonation, a survey will be conducted to ensure the navigational channel is clear for vessels to transit. The drill boat APACHE will broadcast, via VHF-FM channels 13 and 16, when the survey has been completed and the channel is clear to transit. Vessels granted permission to transit through the safety zone must proceed as directed by the designated representative of the Captain of the Port, and must contact the drill boat APACHE, dredge TEXAS, or dredge NEW YORK on VHF-FM channel 13 to make satisfactory passing arrangements.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and traffic management of the safety zone. The Coast Guard does not anticipate any significant economic impact because the safety zone would be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic, except for the short periods of time when explosive detonation evolutions are being conducted. The blasting detonations will not occur more than three times a day. At all other times, at least one side of the main navigational channel would be open for vessels to transit. Moreover, the Coast Guard will work in coordination with the pilots to ensure vessel traffic is limited during the times of detonation and Broadcast Notice to Mariners are made via VHF-FM marine channels 13 and 16 when blasting operations will occur.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental

jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to anchor in or transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not

individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone in force from December 1, 2016, through March 15, 2017, that prohibits entry within 500 yards of vessels and machinery being used by personnel conducting rock blasting, dredging, and rock removal operations within Tinicum Range, Eddystone Range, Chester Range, and Marcus Hook Range. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction M16475.1D. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using

<http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T05-0715 under the undesignated center heading Fifth Coast Guard District to read as follows:

§ 165.T05-0715 Safety Zone; Blasting, Delaware River.

(a) Regulated area. The following area is a safety zone: all the waters of the Delaware River within 500 yards of the drill boat or dredges performing rock blasting, rock removal, and dredging operations, in the Delaware River between the southern end of Marcus Hook Range to the eastern end of Tinicum Range.

(b) Regulations. The general safety zone regulations in § 165.23 apply to the safety zone created by this temporary section, § 165.T05-0715.

(1) All vessels and persons are prohibited from entering into or moving within the safety zone unless authorized by the Captain of the Port, Delaware Bay, or by his designated representative.

(2) Vessels wishing to transit the safety zone, described in paragraph (a) of this section, in the main navigational channel, may do so if they can make satisfactory passing arrangements with the drill boat APACHE, dredge TEXAS, or dredge NEW YORK in accordance with the Navigational Rules in 33 CFR subchapter E via VHF-FM channel 13 at least 30 minutes prior to arrival. If vessels are unable to make satisfactory passing arrangements with the drill boat APACHE, dredge TEXAS, or dredge NEW YORK, they may request permission from the Captain of the Port, or his designated representative, on VHF-FM channel 16.

(3) No vessels may transit through the safety zone during times of explosives detonation. During rock blasting detonation, vessels are required to maintain a 500 yard distance from the drill boat APACHE. The drill boat APACHE will make broadcasts, via VHF-FM channels 13 and 16, at 15 minutes, 5 minutes, and 1 minute prior to detonation, as well as a countdown to detonation on VHF-FM channel 16. The drill boat APACHE will also raise a red flag signifying when a detonation is occurring. The 500 yard radius will be secured by contracted security vessel on either side of the blast area. Security vessel will ensure the blasting area is clear prior to

explosive detonation. Sector Delaware Bay will ensure significant notice is given to the maritime community of dates and times of blasting via broadcast notice to mariners on VHF-FM channel 16.

(4) After every explosive detonation, a survey will be conducted to ensure the navigational channel is clear for vessels to transit. The drill boat APACHE will broadcast, via VHF-FM channels 13 and 16, when the survey has been completed and the channel is clear to transit. Vessels granted permission to transit through the safety zone must proceed as directed by the designated representative of the Captain of the Port and contact the drill boat APACHE on VHF-FM channel 13 to make satisfactory passing arrangements in accordance with the navigational rules in 33 CFR subchapter E.

(5) This section applies to all vessels except vessels that are engaged in the following operations: enforcing laws; servicing aids to navigation, and emergency response vessels.

(c) Definitions. As used in this section:

Captain of the Port Delaware Bay means the Commander, U.S. Coast Guard Sector Delaware Bay, Philadelphia, PA.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) Enforcement. The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) Enforcement period. This section will be effective from December 1, 2016, through March 15, 2017.

Dated: August 23, 2016.

Benjamin A. Cooper,
Captain, U.S. Coast Guard,
Captain of the Port Delaware Bay

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